

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 245 of 1999

in

SPECIAL CIVIL APPLICATION No 5653 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA BHAILALBHAI GUJARATI

Versus

GSRTC

Appearance:

MR HK RATHOD for Appellant
MR NAVIN K PAHWA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 17/08/1999

ORAL JUDGEMENT

This appeal is filed against the judgment and order

passed by the learned Single Judge in Special Civil Application No. 5653 of 1998 on December 8, 1998.

The appellant was a person who had made an application to the Gujarat State Road Transport Corporation ("Corporation") for getting an appointment on compassionate ground. His case was that his father was working as a mechanic in Rajkot Division and he died while he was in employment. As the appellant was a dependent, according to him, he was eligible and qualified to get compassionate appointment under GSO No. 361/73 and settlement dated December 21, 1989. Since he was not given appointment on compassionate ground, he approached the Industrial Tribunal, Rajkot and in Reference (ITR No. 229 of 1992), an award was passed on July 21, 1997 by which the Corporation was directed to give appointment to the appellant on compassionate ground as a helper within one month from the date of publication of award.

Being aggrieved by the said award, the above petition was filed by the Corporation. Learned Single Judge allowed the petition on the ground that the application was filed after long and undue delay and such application was not maintainable in the light of decision of the Apex Court in Haryana Electricity Board vs. Hakim Singh, AIR 1997 SC 3887. At the time of hearing, attention of the Court was invited to a settlement and it was contended that on the basis of the settlement, the Corporation was bound to give appointment to the appellant on compassionate ground. Learned Single Judge, regarding the settlement, observed as under :

"Such appointment will not be covered in exception being contrary to the doctrine of equality before law and equal opportunity in the matter of employment enshrined under Articles 14 and 16 of the Constitution of India. Even any settlement in violation of the provisions of Articles 14 and 16 of the Constitution of India shall be void and render it unenforceable by the Court of law.". (Emphasis supplied).

Mr. Rathod contended that settlement was arrived at between the Corporation and the recognised union as early as in 1989. He further submitted that validity or otherwise of such settlement was not before the court.

In that view of the matter, it was not open to the learned Single Judge to state that even if there was such settlement, it was violative of Articles 14 and 16 of the Constitution and, therefore, void and unenforceable. No doubt, on behalf of the respondent, it was submitted that the above observation of the learned Single Judge was obiter and even if such settlement is considered, the appellant was not entitled to claim appointment on compassionate ground.

On the facts and circumstances of the case, in our opinion, the submission of Mr. Rathod is well founded and requires to be accepted. A settlement was arrived at in 1989. It does not appear to have been challenged. It was also not a question before the Court in the above SCA. In our opinion, therefore, the learned Single Judge could not have expressed any opinion even by way of obiter that such settlement would be violative of Articles 14 and 16 of the Constitution and would be void and unenforceable.

Only on this ground and without observing anything on merits, in our opinion, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside. Office will now place the matter for disposal in accordance with law before learned Single Judge taking up such matters. We may state that we are not expressing any opinion on merits of the matter and as and when the matter will be placed for hearing before learned Single Judge, he will decide the same in accordance with law. Appeal is accordingly allowed. No order as to costs.

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parekh